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Nos. 577-581, 585-587

In the Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

LEVY RICE MILLING CO., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 578

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 579

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

43054—36

No. 580

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 581

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 585

LEVY RICE MILLING CO., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 586

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 587

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

Comes now the Solicitor General, on behalf of the Respondent, and respectfully prays that the judgments heretofore entered in the above-entitled causes be vacated, that the issuance of the mandates thereon be stayed, and that a rehearing be granted.

The respondent respectfully shows that the District Court refused to grant an injunction against the collection of sums claimed as Federal taxes. The decree of the Circuit Court of Appeals denied a motion for a preliminary injunction pending appeal on the ground that the taxpayers had a remedy at law to recover back any taxes illegally exacted and that the court had no jurisdiction to grant injunctive relief. This Court vacated the decree of the District Court and ordered the entry of a decree enjoining the collection of the assailed "exaction."

Section 3224 Revised Statutes, enacted in 1867, and Section 21 (a) of the Agricultural Adjustment Act alike forbid injunctions against the collection of Federal taxes. Section 3224 provides:

> No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

This section applies both to taxes and to such "exactions" as are involved in the cases at bar. In *Bailey* v. *George,* 259 U. S. 16, this Court held that Section 3224 prohibited enjoining the collection of an amount, which on the same day in another case (*Child Labor Tax Case,* 259 U. S. 20) had been decided to be not a tax, but an unconstitutional "exaction" to regulate transactions, the control of which by the Constitution had been reserved to the States. As this is the same situation existing in the instant cases, we respectfully submit that the opinion and judgment of this Court directing that an injunction be granted by the District Court are erroneous and inconsistent with the intent and purpose of the statute, as construed in *Bailey* v. *George.*

The parallel between *Bailey* v. *George* and the cases at bar is striking. In each it was alleged that:

(1) The exaction was unconstitutional.

(2) The collection of the exaction was threatened.

(3) The collection would result in irreparable damage.

(4) An injunction should be granted permanently enjoining collection.

In each case the Collector relied upon the provisions of Section 3224 as depriving the courts of jurisdiction; in each case there was an adequate remedy at law consisting of a suit for refund after payment; in each case the decision was reached in the light of a holding that the imposing statute was unconstitutional; in each case the exaction had not been paid and the decision that the imposing statute was invalid effectively prevented a collection thereafter. A departure from the rule in *Bailey* v. *George* is not required to insure the return of impounded funds to the taxpayer if the Court desires to accomplish that result. A procedural precedent may be found in *Smallwood* v. *Gallardo*, 275 U. S. 56.

As *Bailey* v. *George* is not mentioned or distinguished, it seems certain that the opinion in the present cases will be construed by other courts, in cases raising the constitutionality of tax legislation, as overruling that decision.

The decisions in the instant cases are of the gravest importance in that they involve the construction and applicability of Section 3224. The importance of preserving the rule of *Bailey* v. *George* cannot be overemphasized. Any impairment of the force of that decision or departure from the principle of Section 3224 would destroy essential safeguards to the orderly and uninter-

rupted collection of all Federal taxes and imperil the normal functioning of government.

For the foregoing reasons, your petitioners respectfully pray that this petition be granted, the mandate stayed and the decree of the District Court affirmed.

Copies of this petition have been served upon opposing counsel.

STANLEY REED,
Solicitor General.

JANUARY 1936.

I certify that this petition is presented in good faith and not for delay.

STANLEY REED,
Solicitor General.

U. S. GOVERNMENT PRINTING OFFICE: 1936